

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EOLAS TECHNOLOGIES, INC.,

Plaintiff,

vs.

ADOBE SYSTEMS, INC., ET AL.,

Defendants.

Civil Action No. 6:09-cv-446-LED

AND RELATED COUNTERCLAIMS

**DECLARATION OF TEAGUE I. DONAHEY
IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER**

I, Teague I. Donahey, do state and declare as follows:

1. I am an attorney with the law firm of Sidley Austin LLP (“Sidley”), counsel for Defendant Apple Inc. (“Apple”) in this action. I make this declaration in support of Defendants Adobe Systems, Inc., Amazon.com, Inc., Apple Inc., Blockbuster Inc., eBay Inc., The Go Daddy Group, Inc., Google Inc., New Frontier Media, Inc., Playboy Enterprises International, Inc., Sun Microsystems Inc., Yahoo! Inc., and YouTube, LLC’s Motion to Transfer to the U.S. District Court for the Northern District of California Pursuant to 28 U.S.C. § 1404(a), filed herewith. Unless otherwise stated, the matters contained in this declaration are of my own personal knowledge and, if called as a witness, I could and would testify competently to the matters set forth herein.

2. Accurint is a database service offered by LexisNexis Risk Solutions, Inc. for locating people and past and present addresses. *See* <http://www.accurint.com>.

3. Hoovers Inc. (“Hoovers”), a D&B company, is a service that provides information regarding sales, marketing, and business development about companies, industries, and key decision makers. *See* <http://www.hoovers.com>.

4. LinkedIn Corp. (“LinkedIn”) is a professional networking website that allows its users to create profiles that summarize their professional expertise and accomplishments that may then be viewed by other users. *See* <http://press.linkedin.com>.

5. Attached hereto as Exhibit 1 is a true and correct copy of the Certificate of Formation of Eolas Technologies Incorporated, filed in the Office of the Secretary of State of Texas on July 13, 2009. This document was downloaded from the website of the Secretary of State of Texas, <http://www.sos.state.tx.us/>, on February 5, 2010.

6. Attached hereto as Exhibit 2 is a true and correct copy of the Certificate of Merger of Eolas Technologies Incorporated, a Delaware corporation, and Eolas Technologies Incorporated, a Texas corporation, filed in the Office of the Secretary of State of Texas on July 13, 2009. This document was downloaded from the website of the Secretary of State of Texas, <http://www.sos.state.tx.us/>, on February 5, 2010.

7. Attached hereto as Exhibit 3 is a true and correct copy of a printout of a web page of Eolas Technologies Incorporated, entitled “About Us,” which was downloaded from Eolas’s website, http://www.eolas.com/about_us.html, on February 5, 2010.

8. Attached hereto as Exhibit 4 is a true and correct copy of a letter dated October 22, 2009 from the Texas Office of the Secretary of State regarding the current legal status of Eolas Technologies Incorporated.

9. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from *Sullivan's Law Directory For the State of Illinois* (Law Bulletin Publishing Co. 2009).

10. At my direction, a search was conducted at the website for the State Bar of Texas for attorneys practicing in Texas under the names Mark Swords ("Swords"), James Stetson ("Stetson"), and Eolas. No entries were found for Mr. Swords, Mr. Stetson, or Eolas. Attached hereto as Exhibit 6 are true and correct copies of printouts from the website for the State Bar of Texas, <http://www.texasbar.com/>, which were downloaded on February 5, 2010.

11. Attached hereto as Exhibit 7 is a true and correct copy of a printout of a press release entitled, "Questions and Answers about UC/Eolas patent infringement suit against Microsoft" with a copyright date of 2007, which was downloaded from the University of California website, <http://www.universityofcalifornia.edu/news/article/9812>, on February 5, 2010.

12. Attached hereto as Exhibit 8 is a true and correct copy of a printout of the LinkedIn profile of David C. Martin, which was downloaded from the LinkedIn website, <http://www.linkedin.com/>, on February 5, 2010.

13. Attached hereto as Exhibit 9 is a true and correct copy of a report prepared by Accurint for David C. Martin dated November 24, 2009, which has been redacted for privacy purposes.

14. Attached hereto as Exhibit 10 is a true and correct copy of a printout of the LinkedIn profile of Cheong S. Ang, which was downloaded from the LinkedIn website, <http://www.linkedin.com/>, on February 5, 2010.

15. Attached hereto as Exhibit 11 is a true and correct copy of a report prepared by Accurint for Cheong S. Ang dated October 22, 2009, which has been redacted for privacy purposes.

16. Attached hereto as Exhibit 12 is a true and correct copy of U.S. Patent No. 5,838,906 (“the ‘906 patent”).

17. Attached hereto as Exhibit 13 is a true and correct copy of U.S. Patent No. 7,599,985 (“the ‘985 Patent”).

18. Attached hereto as Exhibit 14 is a true and correct copy of a printout of the Patent Assignment Abstract of Title for the ‘906 patent, which was downloaded from the website of the United States Patent & Trademark Office (“USPTO”), <http://www.uspto.gov/>, on February 4, 2010.

19. Attached hereto as Exhibit 15 is a true and correct copy of the attorney status for Charles J. Kulas, which was downloaded from the website of the State Bar of California, <http://members.calbar.ca.gov/search/member.aspx>, on February 5, 2010.

20. Attached hereto as Exhibit 16 is a true and correct copy of the attorney status for Michael E. Woods, which was downloaded from the website of the State Bar of California, <http://members.calbar.ca.gov/search/member.aspx>, on February 5, 2010.

21. Attached hereto as Exhibit 17 is a true and correct copy of the attorney status for Charles E. Krueger, which was downloaded from the website of the State Bar of California, <http://members.calbar.ca.gov/search/member.aspx>, on February 5, 2010.

22. Attached hereto as Exhibit 18 is a true and correct copy of pertinent excerpts from the file history of U.S. Patent Application No. 08/324,443, which was downloaded from the

Patent Application Information Retrieval (“PAIR”) system of the USPTO website,
<http://portal.uspto.gov/external/portal/pair>, on February 6, 2010.

23. Attached hereto as Exhibit 19 is a true and correct copy of pertinent excerpts from the file history of *Ex Parte* Reexamination No. 90/006,831, which was downloaded from the PAIR system of the USPTO website, <http://portal.uspto.gov/external/portal/pair>, on February 6, 2010..

24. Attached hereto as Exhibit 20 is a true and correct copy of pertinent excerpts from the file history of *Ex Parte* Reexamination No. 90/007,858, which was downloaded from the PAIR system of the USPTO website, <http://portal.uspto.gov/external/portal/pair>, on February 6, 2010.

25. Attached hereto as Exhibit 21 is a true and correct copy of pertinent excerpts from the file history of U.S. Patent Application No. 10/217,955, which was downloaded from the PAIR system of the USPTO website, <http://portal.uspto.gov/external/portal/pair>, on February 6, 2010.

26. Attached hereto as Exhibit 22 is a true and correct copy of a document entitled, “What is Safari?,” which was downloaded from the Apple Inc. website, <http://www.apple.com/safari/what-is.html>, on February 4, 2010.

27. Attached hereto as Exhibit 23 is a true and correct copy of a document entitled, “Google chrome,” which was downloaded from the Google Inc. website, <http://www.google.com/chrome/intl/en/features.html>, on February 5, 2010.

28. Attached hereto as Exhibit 24 is a true and correct copy of a document entitled, “Adobe Flash Player 10,” which was downloaded from the Adobe Systems Incorporated website, <http://www.adobe.com/products/flashplayer/>, on February 5, 2010.

29. Attached hereto as Exhibit 25 is a true and correct copy of a document entitled, “Shockwave Player support FAQ,” which was downloaded from the Adobe Systems Incorporated website, http://kb2.adobe.com/cps/155/tn_15508.html, on February 5, 2010.

30. Attached hereto as Exhibit 26 is a true and correct copy of pertinent excerpts of a document entitled, “QuickTime 7.6 User Guide,” which was downloaded from the Apple Inc. website, http://images.apple.com/quicktime/pdf/QuickTime7_6_User_Guide.pdf, on February 9, 2010.

31. Attached hereto as Exhibit 27 is a true and correct copy of a document entitled, “Learn About Java Technology,” which was downloaded from the Sun Microsystems, Inc. website, <http://java.com/en/about/>, on February 5, 2010.

32. Attached hereto as Exhibit 28 is a true and correct copy of a document entitled, “JavaFX Technology,” which was downloaded from the Sun Microsystems, Inc. website, http://www.sun.com/software/javafx/javafx_datasheet.pdf, on February 5, 2010.

33. Attached hereto as Exhibit 29 is a true and correct copy of a document entitled “Find a Blockbuster Store Near You,” which was downloaded from the Blockbuster Inc. website, <http://www.blockbuster.com/stores/storelocator>, on February 6, 2010.

34. Attached hereto as Exhibit 30 is a true and correct copy of a report prepared by Hoovers for Citigroup Inc., which is dated November 24, 2009.

35. Attached hereto as Exhibit 31 is a true and correct copy of a document entitled “Locations Hours and Details,” which was downloaded from the Citigroup Inc. website, <http://go.mappoint.net/citibankV2/Index.aspx>, on February 6, 2010.

36. Attached hereto as Exhibit 32 is a true and correct copy of a report prepared by Hoovers for Frito-Lay, Inc., dated November 24, 2009.

37. Attached hereto as Exhibit 33 is a true and correct copy of a document entitled “store locations,” which was downloaded from the J.C. Penney Company, Inc. website, <http://www2.jcpenney.com/jcp/StoreLocatorMenu.aspx>, on February 6, 2010.

38. Attached hereto as Exhibit 34 is a true and correct copy of a report prepared by Hoovers for JPMorgan Chase & Co., which is dated November 24, 2009.

39. Attached hereto as Exhibit 35 is a true and correct copy of a document entitled “Branch Locator,” which was downloaded from the JP Morgan Chase & Co. website, https://www.chase.com/ccp/index.jsp?pg_name=ccpmapp/shared/assets/page/Branch_Locator, on February 6, 2010.

40. Attached hereto as Exhibit 36 is a true and correct copy of a document entitled “Find a Store,” which was downloaded from the Office Depot, Inc. website, <http://www.officedepot.com/storelocator/input.do?inventoryLocationUpdatable=false>, on February 6, 2010.

41. Attached hereto as Exhibit 37 is a true and correct copy of a document entitled “10 Nearest Locations to the center of ZIP code 94102,” which was downloaded from the Rent-A-Center, Inc. website, http://www.rentacenter.com/rac_h6/h5_viewstore_new.asp?Zip=94102 on February 6, 2010.

42. Attached hereto as Exhibit 38 is a true and correct copy of a document entitled “Your local stores,” which was downloaded from the Staples, Inc. website, <http://stores.staples-locator.com/staples/>, on February 6, 2010.

43. Attached hereto as Exhibit 39 is a true and correct copy of a document entitled “Careers at TI,” which was downloaded from the Texas Instruments Inc. website,

<http://focus.ti.com/careers/docs/middlecontent.tsp?sectionId=152&tabId=1589>, on February 6, 2010.

44. Attached hereto as Exhibit 40 is a true and correct copy of a document downloaded from the Amazon.com website, <http://www.amazon.com/>, on February 6, 2010.

45. Attached hereto as Exhibit 41 is a true and correct copy of a document downloaded from the Blockbuster Inc. website, <http://www.blockbuster.com/>, on February 6, 2010.

46. Attached hereto as Exhibit 42 is a true and correct copy of a document downloaded from the CDW website, <http://www.cdw.com/>, on February 6, 2010.

47. Attached hereto as Exhibit 43 is a true and correct copy of a document downloaded from the Citigroup Inc. website, <http://www.citigroup.com/citi/homepage/>, on February 6, 2010.

48. Attached hereto as Exhibit 44 is a true and correct copy of a document downloaded from the Frito-Lay, Inc. website, <http://www.frito-lay.com/>, on February 6, 2010.

49. Attached hereto as Exhibit 45 is a true and correct copy of a document downloaded from the Go Daddy website, <http://www.godaddy.com/>, on February 6, 2010.

50. Attached hereto as Exhibit 46 is a true and correct copy of a document downloaded from the J.C. Penney Company, Inc. website, <http://www.jcpenneybrands.com/>, on February 6, 2010.

51. Attached hereto as Exhibit 47 is a true and correct copy of a document downloaded from the JP Morgan & Chase Co. website, <http://www.jpmorgan.com/>, on February 6, 2010.

52. Attached hereto as Exhibit 48 is a true and correct copy of a document downloaded from the New Frontier Media, Inc. website, <http://www.mainlinereleasing.com>, on February 4, 2010.

53. Attached hereto as Exhibit 49 is a true and correct copy of a document downloaded from the Office Depot, Inc. website, <http://www.officedepot.com/>, on February 6, 2010.

54. Attached hereto as Exhibit 50 is a true and correct copy of a document downloaded from the Perot Systems Corp. website, <http://www.perotsystems.com/default>, on February 6, 2010.

55. Attached hereto as Exhibit 51 is a true and correct excerpt of a document downloaded from the Playboy website, <http://www.playboy.com/>, on February 6, 2010.

56. Attached hereto as Exhibit 52 is a true and correct copy of a document downloaded from the Rent-A-Center, Inc. website, <http://www6.rentacenter.com/Rent-A-Center-Home.html>, on February 6, 2010.

57. Attached hereto as Exhibit 53 is a true and correct copy of a document downloaded from the Staples, Inc. website, <http://www.staples.com/>, on February 6, 2010.

58. Attached hereto as Exhibit 54 is a true and correct copy of a document downloaded from the Texas Instruments Inc. website, <http://www.ti.com/>, on February 6, 2010.

59. Attached hereto as Exhibit 55 is a true and correct copy of pertinent excerpts from the trial transcript in the matter, *Eolas Technologies, Inc. v. Microsoft Corp.*, Case No. 99-CV-00626 (N.D. Ill.), dated July 28-29, 2003.

60. Attached hereto as Exhibit 56 is a true and correct copy of a document entitled, "About NCSA Mosaic," which was downloaded from the website of the University of Illinois at

Urbana-Champaign, National Center for Supercomputing Applications,
<http://www.ncsa.illinois.edu/Projects/mosaic.html>, on February 6, 2010.

61. Attached hereto as Exhibit 57 is a true and correct copy of report prepared by Accurint for Marc Andreessen dated January 13, 2010, which has been redacted for privacy purposes.

62. Attached hereto as Exhibit 58 is a true and correct copy of a document entitled, "Bill Janssen," which was downloaded from the website of the Palo Alto Research Institute, <http://www2.parc.com/isl/members/janssen/> on February 6, 2010.

63. Attached hereto as Exhibit 59 is a true and correct copy of a printout of the LinkedIn profile of George Toye, which was downloaded from the LinkedIn website, <http://www.linkedin.com/>, on February 5, 2010.

64. Attached hereto as Exhibit 60 is a true and correct copy of a report prepared by Accurint for George Toye dated November 25, 2009, which has been redacted for privacy purposes.

65. Attached hereto as Exhibit 61 is a true and correct copy of a printout of the LinkedIn profile of Dale Dougherty, which was downloaded from the LinkedIn website, <http://www.linkedin.com/>, on February 5, 2010.

66. Attached hereto as Exhibit 62 is a true and correct copy of a report prepared by Accurint for Dale Dougherty dated November 25, 2009, which has been redacted for privacy purposes.

67. Attached hereto as Exhibit 63 is a true and correct copy of a printout of the LinkedIn profile of Karl Jacob, which was downloaded from the LinkedIn website, <http://www.linkedin.com/>, on February 5, 2010.

68. Attached hereto as Exhibit 64 is a true and correct copy of a report prepared by Accurint for Karl Jacob dated November 25, 2009, which has been redacted for privacy purposes.

69. Attached hereto as Exhibit 65 is a true and correct copy of a printout of the LinkedIn profile of James Kempf, which was downloaded from the LinkedIn website, <http://www.linkedin.com/>, on February 5, 2010.

70. Attached hereto as Exhibit 66 is a true and correct copy of a report prepared by Accurint for James Kempf dated November 25, 2009, which has been redacted for privacy purposes.

71. Attached hereto as Exhibit 67 is a true and correct copy of a document downloaded from the website of the Secretary of State of California, <http://kepler.sos.ca.gov/cbs.aspx>, on February 9, 2010.

72. Attached hereto as Exhibit 68 is a true and correct copy of a document downloaded from the website of the Secretary of State of California, <http://kepler.sos.ca.gov/cbs.aspx>, on February 9, 2010.

73. Attached hereto as Exhibit 69 is a true and correct copy of a document downloaded from the Townsend and Townsend and Crew LLP website, <http://www.townsend.com/Who/officeshome>, on February 4, 2010.

74. Attached hereto as Exhibit 70 is a true and correct copy of a printout of the LinkedIn profile of Pei-Yuan Wei, which was downloaded from the LinkedIn website, <http://www.linkedin.com/>, on February 5, 2010.

75. Attached hereto as Exhibit 71 is a true and correct copy of a report prepared by Accurint for Pei-Yuan Wei dated November 25, 2009.

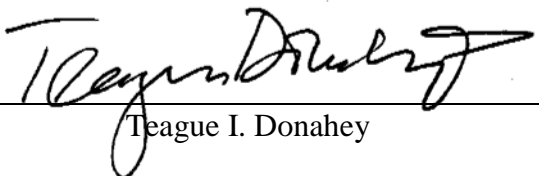
76. Attached hereto as Exhibit 72 is a true and correct copy of documents downloaded from the American Airlines, Inc. website, <http://www.aa.com/homePage.do>, on February 4, 2010.

77. Attached hereto as Exhibit 73 is a true and correct copy of a printout of the 2008 Judicial Caseload Profile of the U.S. District Court for the Northern District of California, which was downloaded from the website of the United States District Courts, <http://www.uscourts.gov/cgi-bin/cmsd2008.pl>, on February 5, 2010.

78. Attached hereto as Exhibit 74 is a true and correct copy of a printout of the 2008 Judicial Caseload Profile of the U.S. District Court for the Eastern District of Texas, which was downloaded from the website of the United States District Courts, <http://www.uscourts.gov/cgi-bin/cmsd2008.pl>, on February 5, 2010.

79. Attached hereto as Exhibit 75 is a true and correct copy of pertinent excerpts of a document, Michael D. Doyle et al., *The Visible Embryo Project: Embedded Program Objects for Knowledge Access, Creation and Management through the World Wide Web*, Computerized Medical Imaging and Graphics Vol. 20, No. 6, at 423-31 (Elsevier Science Ltd. 1996).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 10, 2010, in San Francisco, California.



Teague I. Donahey